

licensee and the incumbent. During the subsequent mandatory relocation period, the frequency relocation would be initiated by application of the MTA licensee.

In short, OneComm's voluntary-to-mandatory frequency relocation program will best achieve the Commission's twin goals of developing wide-area systems while also protecting the viability of smaller systems.⁴⁹ Wide-area systems would be further developed because, with some element of mandatory frequency relocation, the proposed three- and five-year MTA coverage benchmarks for single-channel coverage could be feasibly met. By contrast, under purely voluntary frequency relocation, MTA licensees would not be able to procure sufficient spectrum to meet such benchmarks. The viability of smaller systems would be protected under mandatory frequency relocation because, where the parties did not reach agreement under voluntary frequency relocation, the incumbent would relocate only under mandatory terms found by the Commission to be fair. Once again, the Commission need not "re-invent the wheel" here. Instead, the Commission could appropriately adapt the voluntary-to-mandatory frequency relocation program of the Emerging Technologies docket.

49 Further NPRM at 12.

**V. ONECOMM SUPPORTS FURTHER NPRM PROPOSALS
 TO ENCOURAGE DEVELOPMENT OF CONTIGUOUS
 SPECTRUM**

As detailed supra, the most effective approach to developing contiguous SMR spectrum is adoption of a frequency relocation program similar to that adopted in Emerging Technologies docket.⁵⁰ In addition to frequency relocation, however, the Further NPRM makes other important proposals that would assist in the development of contiguous spectrum. OneComm therefore endorses the following Further NPRM proposals.

The Further NPRM correctly concluded that no limit to aggregation of 800 MHz spectrum is necessary to supplement the already applicable 45 MHz cap on accumulation of broadband PCS, cellular and SMR spectrum.⁵¹ Even where a licensee is the high bidder on all of the upper 10 MHz, or accumulates the entire 14 MHz of SMR spectrum in an area, this aggregation would still fall well below the 45 MHz cap,⁵² and below the spectrum allocated to either of the cellular carriers with whom the SMR licensee will compete.

Self-coordinated construction anywhere within an MTA would encourage operational flexibility and should be implemented,⁵³ provided that co-channel interference

50 See ET Docket Third Report and Order.

51 Further NPRM at 16.

52 Id.

53 Id. at 19-20.

protection is afforded incumbent licensees.⁵⁴ Similarly, any SMR spectrum in the upper 10 MHz that is recovered by the Commission should revert automatically to the MTA licensee that was high bidder for the contingent rights to that spectrum.⁵⁵

The Further NPRM correctly concluded that expansion of incumbent systems beyond existing service areas should be allowed only by consent of the MTA licensee.⁵⁶ This will encourage development of contiguous-spectrum systems by the MTA licensee. Consistent with this approach, moreover, is the Further NPRM's proposal allowing incumbent licensees to construct low power fill-in sites so long as the 40 dBu contour does not extend beyond existing service areas.⁵⁷ OneComm supports both of these Further NPRM service area proposals as properly balancing the respective needs of MTA and incumbent system licensees. OneComm further proposes herein more liberal modification rules for local systems operating on the lower 80 channels.

OneComm concurs that incumbent licensees should be afforded co-channel interference protection.⁵⁸ Reasonable

54 Id. at 24.

55 Id. at 20.

56 Id. at 23.

57 Id. at 24-25. However, OneComm believes that the ability to add sites should be allowed so long as the 22 dBu contour of an incumbent station is not extended.

58 Id. at 24.

as this protection is, however, such a requirement, without assured access to sufficient spectrum through voluntary-to-mandatory frequency relocation, would hamper the MTA licensee's ability to meet coverage benchmarks⁵⁹ Furthermore, setting co-channel interference requirements to apply only at the perimeter of licensed service areas⁶⁰ would encourage development of contiguous-spectrum systems and would promote regulatory parity with competing cellular and PCS systems. Once sufficient spectrum is accumulated to implement wide-area systems, the MTA licensee will more readily develop such systems if given the flexibility already afforded cellular and PCS systems.

A five-year construction period⁶¹ with three-year and five-year coverage benchmarks⁶² will also assist development of contiguous-spectrum systems better than current one-year construction and loading requirements. Adopting three-and five-year benchmarks, rather than the 10-year PCS requirement, should be sufficient to resolve any concerns that the SMR spectrum would be "warehoused."⁶³ If voluntary relocation alone is adopted, however, a 10-year license and build-out requirement should be adopted because

59 See id.

60 Id. at 25.

61 Id. at 27.

62 Id. at 28.

63 See id. at 26-27, 28.

the incumbents' refusal to relocate will impede the MTA licensee's construction efforts. Existing extended implementation schedules should be honored.⁶⁴ Commission licensees should not be subjected to a "double jeopardy" order to justify again what already was authorized. Moreover, there is no need to alter existing five-year implementation schedules if mandatory frequency relocation is adopted as they differ little from the proposed five-year construction benchmarks.

OneComm concurs that "coverage" should be defined as single-channel coverage for purposes of meeting MTA-license construction benchmarks.⁶⁵ Sufficient incentives to fully utilize any available channels already are provided by the acquisition costs to an MTA licensee of:

(1) successfully bidding for the MTA license; and (2) paying for expenses of relocating incumbent licensees.

VI. LOCAL CHANNELS SHOULD BE MADE MORE HIGHLY PRODUCTIVE

The Further NPRM tentatively concluded that SMR and non-SMR candidates should be prohibited from applying for the same channels in the General Category and Pool Channels and sought comment on how the spectrum should be allocated to address the relative demand for SMR and non-SMR services.⁶⁶ OneComm urges that, in light of the spectrum

64 Id. at 28.

65 Id. at 28-29.

66 Id. at 31.

shortages already apparent from the Commission's SMR wait-list and application backlog, the demand for SMR services is significantly greater than for non-SMR services. OneComm therefore urges allocation of all of the General Category channels to SMR use. Because the 150 General Category channels are contiguous, they would be attractive frequency relocation candidates for smaller systems desiring to build wide-area systems. Voluntary-to-mandatory frequency relocation therefore, likely will provide expansion opportunities for smaller systems. OneComm concurs that eligibility should be divided between SMR and non-SMR channels so that the two disparate groups are not required to compete with each other for spectrum.⁶⁷

The Further NPRM also tentatively concluded that the lower 80 non-contiguous SMR channels ("local channels") should be licensed on channel-by-channel basis, which would more readily support stand-alone systems.⁶⁸ OneComm supports such allocation and agrees that it could lead to voluntary frequency swaps between incumbent local systems on upper channels and incumbent wide-area systems on lower channels.⁶⁹ Such allocation, although necessary to relocation, is not sufficient to prompt full frequency relocation to contiguous spectrum. As urged supra, a

⁶⁷ Id.

⁶⁸ Id. at 14.

⁶⁹ See id.

voluntary-to-mandatory relocation program must be combined with a licensing regime for local channels that accommodates stand-alone systems in order to realistically provide an opportunity for development of contiguous spectrum.

Voluntary MTA-wide licensing of single or aggregated local channels should be permitted. Such a regime would mirror the configuration of MTA licenses thereby making the local channels more fungible in relocation negotiations and more valuable to relocated licensees. All systems licensed on a local channel (or channels) could voluntarily come together to create a single MTA-wide license. After three years, the unlicensed geographic areas of local channels ("white space") could be auctioned, on a basis of non-interference with incumbent licensees.

OneComm, however, could also support site-by-site licensing on the local channels if it would minimize the potential disruption to local systems, so long as there is a path to voluntary MTA-wide licensing.⁷⁰ Similarly, local channel modification applications (which would not be subject to auction) should be liberally permitted so long as some part of the new service area overlaps the existing service area.

OneComm supports measures to prevent warehousing of local channels, including establishment of a uniform twelve-

⁷⁰ See id. at 16-17.

month construction period and a requirement to commence service at the end of the construction period.⁷¹ As noted above, currently authorized extended implementation schedules for existing wide-area SMR systems should be honored.⁷² Licensees holding these authorizations should not be subjected to "double jeopardy" requirements to justify again the implementation period even where the period is longer than that now authorized for the band.

71 Id. at 26-27.

72 Id. at 28.

CONCLUSION

Congress and the Commission have provided a new direction for wide-area SMR: development as a common carrier competitor to other CMRS providers. This proceeding offers a regulatory vehicle to implement this vision for SMR. Although the Commission has articulated proper goals and objectives for this proceeding, its proposed implementation plan ensures that they cannot be achieved. OneComm respectfully urges the Commission instead to incorporate the alternative balanced approach outlined herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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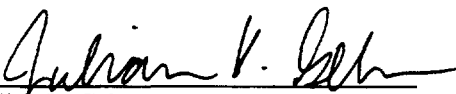
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